



James P. Hallan, President and CEO
Michigan Retailers Association
House Tax Policy Committee Testimony
May 1, 2013

Mr. Chairman and Committee members, thank you for scheduling this hearing on HBs 4202 and 4203, the Michigan Main Street Fairness Act. My name is Jim Hallan and I'm President and CEO of the Michigan Retailers Association. With me are two of our members who will give you some real-life examples of the importance of these bills. I'd like to make some general comments and then turn it over to them.

This legislation has broad support among both large and small retailers and is critical to maintaining the business fabric of our communities. Michigan Retailers Association represents over 15,000 storefronts and e-commerce websites in Michigan. Our members include Main Street jewelers, shoe stores, gift stores, furniture stores, grocery stores and the largest retail chain drug and general merchandise stores operating throughout the country.

Retail is responsible for more than 850,000 jobs in Michigan. One out of every four jobs is connected to retail. These bills affect every Michigan retail job because retailers hire employees based on sales. Unfortunately, our current sales tax law encourages consumers to purchase goods over the Internet from companies outside of Michigan. The law hurts businesses that have invested in Michigan while giving a competitive advantage to out-of-state Internet retailers that have not invested in Michigan, not paid taxes in Michigan and not created any jobs in Michigan.

The issue before you today is straightforward.

If you are a retailer with nexus in Michigan, you are required to collect and remit sales tax at the point of sale. In 1992, the U.S. Supreme Court defined nexus as a physical test, so only retailers with a physical presence must currently collect and remit the sales tax.

However, many out-of-state Internet retailers without a "physical presence" in the state are still operating in the state and selling goods to Michigan consumers. Because the sales tax is not collected for those sales, the consumer is required to remit the 6 percent tax as a use tax when he or she files the personal income tax return. Of course, this system of voluntary compliance is problematic and sets up a situation where people conveniently forget to remit the use tax when they file their income tax return.

It's also important to note that in 1992 the Internet had not yet been introduced to the public. We are asking you to pass legislation that catches up with technology by redefining nexus based on common business and economic practices.

Let's talk about what the bills do, what they don't do and why they are needed.

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What does the proposed legislation do?

1. It creates fairness among all retailers by leveling the playing field at the time a sale is made. Every retailer that meets the newly defined nexus test would have to collect sales tax at the point of sale. The 6 percent pricing advantage that out-of-state Internet retailers currently enjoy at the critical point of time when a sale is made would go away.
2. It creates a new and stronger definition of nexus and recognizes that many out-of-state Internet companies are already operating in Michigan through a vast network of affiliates or subsidiaries. Affiliates are basically an in-state sales force that is paid commissions by the Internet retailer.
3. The bills recapture lost revenue to the state. Gov. Snyder in his May 2012 letter to Congress indicated that Treasury estimates Michigan loses \$436 million annually by failing to collect sales tax at the time of the sale. Treasury has since upped its estimate to \$491 million next year.
4. It provides additional money to the schools and local government. 73% of the sales tax goes to schools and 24% to local governments.
5. It makes it easier for consumers to pay sales tax at the point of sale rather than reconcile their Internet receipts when they do their personal income tax return.

What doesn't the legislation do?

1. First, it does **not** create a new tax. Remember, if a consumer purchases a product over the Internet and sales tax is not collected at the point of sale, the consumer is required to declare that purchase when he or she files the personal income tax return and pay a 6% use tax.
2. The bills do **not** require Michigan companies to collect sales tax for online sales in other states unless they have established nexus in the state where the goods are sold and that state has a similar law.
3. It does **not** create a collection hardship. It's not the small affiliate but the large company behind the affiliate that is collecting the tax. More important, calculating sales tax is now an automated process. There are several certified service providers recommended by the Streamlined Sales Tax Governing board. And software has even been available on the Amazon website itself.
4. It will **not** create a situation where affiliates will lose their source of income. Almost every major retailer has an affiliate program. There is a home for everyone. Also, in other states where affiliates have been terminated by Internet-only retailers like Amazon and Overstock, the companies have often reinstated those agreements.

Are the bills constitutional?

1. Yes. The state of New York was the first state to pass a Main Street Fairness bill. New York's highest court recently held that its state's Main Street Fairness law is constitutional. Specifically, the court held that the affiliate programs of Amazon and Overstock created sufficient nexus for sales tax collection. HBs 4202 and 4203 are patterned after the New York act.

Shouldn't we wait for Congress to Act?

1. No. Even if the U.S. Senate acts on May 6, which may happen, there is no guarantee that the U.S. House will also act. The House certainly has a different make-up than the Senate.

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2. Other states have moved the issue forward, such as New York, California, Texas, Tennessee, South Carolina, Georgia along with 20 others.
3. While it is good for Congress to focus on a federal solution, it is only doing so because of the action by the states. Moving this legislation forward in Michigan will be another strong message to Congress. Michigan simply can't wait for another Christmas holiday to pass without some relief. At some point in time, we need to be in control of our destiny and not wait for the gridlock in D.C. to resolve itself.

Why act now?

The problem will not go away; in fact, it's getting worse. During the last holiday season, Internet sales grew by 11% across the nation, compared to only 3 percent for total retail sales. Quite simply, we should not be giving favored treatment to out-of-state online companies that don't invest in our state. The playing field should be level for all. Interestingly, the thousands of retailers who have invested in Michigan are not looking for favored treatment. Rather, they just want the ability to compete fairly.

This legislation is truly about leveling the playing field between retailers. Brick-and-mortar retailers can compete on price, but they shouldn't be put at a 6% disadvantage out of the gate.

Thank you.

Now I'd like to introduce Dan Marshall, the owner of seven music stores in Michigan and who has testified before the U.S. House Judiciary Committee on Main Street Fairness. Also with me is Barb Stein, past chair of the Michigan Retailers Association and the owner of the Great Northern Trading Company in Rockford.

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Frequently asked questions about Main Street Fairness

What is Main Street Fairness legislation and what would it do?

What is Main Street Fairness?

Main Street Fairness is legislation that is designed to protect Michigan's retailers by requiring certain out-of-state online retailers to collect and remit Michigan's sales tax.

How does the legislation work?

The legislation creates a new definition of "physical presence" to include companies that operate in Michigan through subsidiaries, affiliate networks, or other persons that have substantial nexus with the state.

Does Main Street Fairness only apply to Amazon?

No. The legislation would apply to any out-of-state online company that has a physical presence in Michigan.

Would all online-only retailers be required to collect and remit sales tax?

No. Only retailers that have a defined physical presence in the state would be required to collect and remit sales tax. The defined physical presence includes companies that operate in Michigan through subsidiaries, affiliate networks, or other persons that have substantial nexus with the state.

What is happening in Michigan under current law?

Who is currently required to collect and remit sales tax?

Only retailers that have a physical presence in Michigan are required to collect and remit the sales tax. Some online companies exploit this loophole by doing business in the state through subsidiaries or through a network of affiliates.

Do Amazon and Overstock currently collect Michigan sales tax?

No. But they should! Amazon has a wholly owned subsidiary, Brilliance Audio, which is located in Grand Haven, Michigan. Additionally, both Amazon and Overstock use a vast network of affiliates in Michigan to sell products through their online sites.

Aren't online shoppers already required to calculate and pay use tax on their purchases when they file their income tax returns?

Yes, but most do not. The majority of Michigan residents apparently do not know they are required to pay use tax on items purchased from out-of-state, online, or mail-order companies. This tax is due when an individual files a personal income tax return. In fact, the Michigan Department of Treasury found that only 1.4 percent of the estimated tax liability on remote sales was collected in 2011.¹

¹ Michigan Department of Treasury, "Michigan Sales and Use Taxes 2011," December 2012. Available: http://www.michigan.gov/documents/treasury/Sales_Use_Tax_Report_2011_December2012_407801_7.pdf.

How does Main Street Fairness impact Michigan retailers and customers?

Why is Main Street Fairness important to retailers?

Main Street Fairness levels the playing field for Michigan retailers who are at a disadvantage because they are required to collect the 6% sales tax. Without Main Street Fairness, consumers will continue to use brick-and-mortar retailers as showrooms and avoid paying sales tax by purchasing products online from out-of-state companies.

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If I have a brick-and-mortar store located in Michigan, how would the legislation affect me?

Because you already have a physical presence in Michigan, you are already required to collect and remit Michigan sales tax. The legislation would remove the competitive advantage out-of-state online companies have and would allow you to compete on a level playing field.

If I have a brick-and-mortar store in Michigan but I sell products online to other states, would the legislation require me to collect and remit sales tax for other states?

No. The legislation only deals with Michigan sales tax. Some other states have passed similar legislation, however, you would not be required to collect and remit sales tax in any of those states unless you have a physical presence in that state.

Why should we act now?

What impact does the legislation have on the state?

The Michigan Department of Treasury estimates that \$491 million will be lost in FY 2014 due to uncollected sales tax revenue – largely from remote purchases – and the Department projects that number to increase each year.² Schools and local governments receive the majority of sales tax dollars raised, with 73 percent going to the school aid fund and 24 percent going to local governments.

What are other states doing to address this problem?

14 states have passed similar legislation to end the unfair advantage out-of-state online retailers have over in-state retailers. These states include California, Georgia, Illinois, New York and Texas. And 13 states have come to an agreement with Amazon to collect the state sales tax, often prompted by legislative action.³

I've heard a federal solution is the only way to really change the law, is this true?

No. While Congress is the only entity that can tax interstate commerce, states can levy and address how state-based taxes are collected. While it is good for Congress to focus on a federal solution, it is only doing so because of the action by the states. Even if the U.S. Senate acts on May 6, which may happen, there is no guarantee that the House will also act.

² Michigan Department of Treasury, "Michigan Sales and Use Taxes 2011," December 2012. Available: http://www.michigan.gov/documents/treasury/Sales_Use_Tax_Report_2011_December2012_407801_7.pdf.

³ Public Sector Consultants, "Individual States Moving Rapidly toward Internet Sales Tax Collection An Addendum to Michigan Sales Tax Collection and the Internet: A Need for Fairness," May 2012.



Chamber and Business Organizations Supporting Michigan's Main Street Fairness Initiative

Alpena Chamber of Commerce – Statement of public support

Birmingham Principal Shopping District – Passed resolution in support (4/24/12)

Brighton Area Chamber of Commerce – Joined Main Street coalition

Coldwater Downtown Business Association – Joined Main Street coalition

Delta Charter Township Economic Development Corporation – Passed resolution in support (12/19/11)

Downtown Petoskey – Letter of support (12/26/11)

Gaylord Area Chamber of Commerce – Passed resolution in support (2/21/12)

Hillsdale Business Association – Joined Main Street coalition

Meridian Economic Development Corporation – Passed resolution in support (1/12/12)

Michigan Agri-Business Association – Press release supporting Main Street (1/17/12)

Michigan Assoc. of Recreation Vehicles and Campgrounds – Press release supporting Main Street (4/11/12)

Michigan Downtown Association – Press release supporting Main Street (5/22/12)

Michigan Grocers Association – Press release supporting Main Street (1/17/12)

Petoskey Chamber of Commerce – Statement of public support

Rockford Chamber of Commerce – Passed resolution in support (2/14/12)

Rockford Downtown Development Authority – Passed resolution in support (2/13/12)

Sault Area Chamber of Commerce – Joined Main Street coalition and meeting minutes (2/10/12)

Traverse City Chamber of Commerce – Statement of public support

